



MICHIGAN HEALTH & HOSPITAL ASSOCIATION

Advocating for hospitals and the patients they serve.

TO: Members of the House Commerce Committee
FROM: Brian Peters, Senior Vice President, Advocacy
DATE: June 20, 2006
SUBJECT: HB 6213 – Amendments to the Minimum Wage Statute

MHA Position: Support

The Michigan Health & Hospital Association strongly supports House Bill 6213, which would correct a significant unintended consequence created when the legislature passed and Governor Granholm signed legislation which will increase the minimum wage for workers.

Prior to this legislation, the minimum wage for workers in Michigan mirrored that of the minimum wage dictated by the federal Fair Labor Standards Act ("FLSA"). **A significant consequence of raising Michigan's minimum wage is that Michigan employers will be subject to all of Michigan's wage and hour statute as of October 1, 2006 instead of the federal FLSA.** Most Michigan employers have not been subject to the various provisions of Michigan's wage and hour statute since its passage in the 1960's. Unfortunately, there are significant differences between Michigan's Wage and Hour Statute and the federal FLSA. **Many payment practices of Michigan Employers will need to be reviewed and changed as of October 1, 2006 unless the Michigan Legislature takes action, quickly, to remove this unintended consequence by passing HB 6213.**

When the Legislature passed, and the Governor signed, Senate Bill 318 thereby creating Public Act 81 of 2006 and raising the minimum wage in Michigan, a little known provision of Michigan's Minimum Wage Law of 1964 (MCL 408.381 - 408.405) (hereinafter "Michigan's Act") was activated for the first time since 1964. MCL 408.394 provides that Michigan's Act "does not apply to an employer who is subject to the minimum wage provisions of the fair labor standards act of 1938...unless application of those federal minimum wage provisions would result in a lower minimum wage than provided in this act." Since the state minimum wage has not exceeded the federal, the FLSA has governed the wage and hour practices of Michigan employers.

Now, in light of the state minimum wage being raised above the federal minimum wage, Michigan's Act will govern the wage and hour practices of Michigan employers as of October 1, 2006. The differences are significant, especially when it comes to the payment of overtime for hourly workers and determining who can be exempted from overtime payments. Two of the

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most significant differences which will have major negative impacts on Michigan hospitals include the following:

1. 8/80 Overtime Rule No Longer Available. The 8/80 rule under Section 7(j) of the FLSA is not available to any hospital. Thus, the only basis for payment of overtime available to hospitals would be the 40 hour rule which requires payment of overtime at a rate of one and one half times an individuals regular rate of pay for all hours worked over 40 in a workweek. The practice of utilizing the alternative method of paying overtime for all hours worked or 8 in a day and 80 in a two week pay period will no longer be available to most hospitals. **Thousands of nurses and other health care professionals will lose the ability to use the 8/80 rule to create flexible work schedules.**
2. Salary Basis Test Exceptions No Longer Available. Individuals who are (1) paid on a salary basis and (2) meet one of the duties tests may be considered exempt from overtime. The FLSA provides for an exception to first part of the overtime test in the case of certain professions. Thus, an individual may still be considered overtime exempt if the individual is paid on an hourly rate basis and is otherwise exempt under the relevant duties test. Specifically, physicians paid on an hourly rate basis may be considered exempt from overtime payments. A similar rule exists under the FLSA for certain Computer Professionals who are paid more than \$27.63/hour. These exceptions from the salary basis test do not exist under Michigan's Act. Loss of this exception will have a significant negative financial impact on hospitals.

Again, the MHA urges the legislature to pass HB 6213 so that Michigan hospitals and other employers are not faced with overhauling their wage and hour practices in order to come into compliance with the various provisions of Michigan's outdated wage and hour statute. Please contact David Finkbeiner, Senior Director, Legislative Issues, at 517-703-8604 if you have any questions.